

DIR-VPC-03-009

**MICROSOFT MASTER TECHNICAL SERVICES AGREEMENT- STATE & LOCAL**

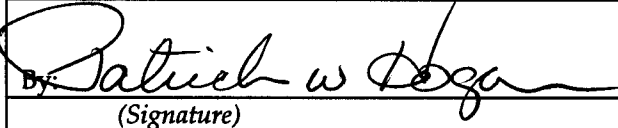
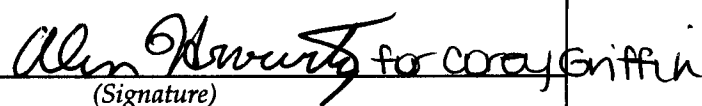
This MICROSOFT MASTER TECHNICAL SERVICES AGREEMENT-STATE & LOCAL is entered into between the following agency and Microsoft affiliate as of the effective date identified below. If different from the main contact information, any notices must be addressed to the contact and locations outlined in the notices section below. We will notify you in writing if our address information changes. You must notify us in writing if your address changes.

Agency Name State of Texas, acting by and through the Department of Information Resources	Name and address of contracting Microsoft affiliate Microsoft Consulting Services
Street Address and/or post office box 300 West 15 <sup>th</sup> Street Suite #1300	Street Address and/or post office box 5335 Wisconsin Avenue, NW Suite #600
City and State / Province Austin, Texas	City and State / Province Washington, DC
Country and Postal Code 78701	Country and Postal Code 20015
Contact Name Stephanie Miller	
Phone Number 512-463-6362	Phone Number 202-859-2000
Fax Number 512-475-4759	Fax Number 202-274-1447
Email Address <a href="mailto:Stephanie.miller@dir.state.tx.us">Stephanie.miller@dir.state.tx.us</a>	Email Address <a href="mailto:Coreyg@Microsoft.com">Coreyg@Microsoft.com</a>
For the Attention of: Stephanie Miller	For the Attention of: Corey A. Griffin
	<b>The agreement and attached documents should be sent to the above address for approval and processing.</b>
<b>Agency Notices Information (if different than above)</b> Agency Name	<i>All NOTICES should have Copy To:</i>  Microsoft Corporation, Law and Corporate Affairs
Street Address and/or post office box	One Microsoft Way
City and State / Province	Redmond, WA
Country and Postal Code	USA 98052
Contact Name	
Phone Number	
Fax Number	425-936-7329
Email Address	

	@Microsoft.com
For the Attention of:	For the Attention of: Services Attorney

This agreement consists of (1) this cover page, (2) the attached terms and conditions, and (3) any Statement of Work entered into under this agreement.

By signing below, you represent that the information you provide on this and each of the attached forms is accurate.

<b>Name of Agency (Entity Name):</b> State of Texas, Department of Information Resources	<b>Name of contracting Microsoft affiliate:</b> Microsoft Consulting Services
By:  (Signature)	By:  (Signature)
Name: Patrick W. Hogan (Printed)	Name: Corey A. Griffin (Printed)
Title: Director, Business Operations, DIR (Printed)	Title: Contract Manager (Printed)
Date: 10/28/02	Effective Date: 11/1/02

OK  
8/10/25/02

**MICROSOFT SERVICES AGREEMENT**  
**TERMS AND CONDITIONS**

1. **Definitions.** In this agreement, "you" means, as the context requires, the agency that has signed this agreement with us or the affiliate that signs a Statement of Work; "we" or "us" means, as the context requires, the Microsoft entity that has signed this agreement or the affiliate that signs a Statement of Work; "affiliates" means (i) with regard to you, *Texas state agency as defined in Texas Government Code, Section 2054.003, (including institutions of higher learning as defined in Texas Education Code, Section 61.003) any other state agency that utilizes the agreement under an Interagency Contract, and local governments in Texas as defined in Texas Government Code, Section 2054.003(including public schools);* and (ii) with regard to us, legal entities that we own, which own us, or which are under common ownership with us; and "service deliverables" means computer code and related materials we provide to you when performing technical services. Certain other terms are defined as set forth elsewhere in this agreement, including Statement of Works.

2. **Services.** We agree to provide *technical services* under the terms and conditions of this agreement. The precise scope of the services will be specified in a *Statement of Work* entered into under this agreement. You or any of your affiliates can enter into a *Statement of Work* under this agreement with our local affiliate. *Each individual affiliate is responsible for its compliance with the terms and conditions of this agreement. DIR will be responsible for compliance with the terms in this agreement applicable to DIR, but not for the compliance of any affiliates with the terms applicable to affiliates.* Our ability to deliver the services depends upon your full and timely cooperation, as well as the accuracy and completeness of any information you provide. This agreement does not obligate either of us or any of our affiliates to enter into any Statement of Work. *Prior to commencing services hereunder, we and the affiliate requesting the services shall execute a Statement of Work and we and you shall execute an acknowledgment of services.*

3. **Fees and expenses.** *After we provide the technical services under this agreement and the technical services have been accepted by the affiliate, you agree to pay us the correctly invoiced fees for services described in each DIR and affiliate approved Statement of Work and Acknowledgement You will reimburse us for reasonable travel expenses in accordance with the State of Texas Travel Management Program,a copy of which is available from the Texas Building and Procurement Commission, and provided such travel expenses are specified in the Statement of Work. You agree to pay us pursuant to the Texas Prompt Payment Act, which directs payment 30 days following acceptance by the affiliate and DIR of the services provided. Technical services are deemed accepted upon affiliate approval of properly submitted invoiced hours and travel expenses. You and each of your affiliates are tax exempt and shall not pay, or be liable for the reimbursement of, any sales, use, value added, excise or other tax, duties, tariffs, or other governmental charges or expenses on payments made under this agreement. We are responsible for taxes based upon our personal property ownership and net income. We will assess a finance charge of the lesser of 1.5% per month or the highest amount allowed by the Texas Prompt Payment Act on all past due amounts. Failure to pay for more than 60 days after the date of invoice shall be a material breach, unless non-payment is pursuant to a dispute as authorized under the Texas Prompt Payment Act.*

4. **Restrictions on use.** You may not transfer licenses to, or sublicense, service deliverables to the U.S. Government. You acknowledge that software licensed under this agreement is of U.S. origin. You agree to comply with all applicable international and national laws that apply to these products, including the U.S. Export Administration Regulations, as well as end-user, end-use and country destination restrictions issued by U.S. and other governments. For additional information on exporting Microsoft products, see <http://www.microsoft.com/exporting/>.

5. **Contract procedures.** *The affiliate will contact us to obtain a Statement of Work for technical services. We will issue a Statement of Work to the affiliate, which includes the MS Public Sector Price List rates plus the DIR administrative fee, which is currently 2%. The Statement of Work will include the service level of the technician, the number of hours, the total estimated travel expenses and a start and end date. Upon receipt of the Purchase Order and Statement of Work, DIR will request an Acknowledgment from us. You will present an affiliate approved Statement of Work to us, along with an executed Acknowledgment. After you present the approved Statement of Work and Acknowledgment, which will include MS Public Sector Price List rates and your signature, we will commence work. We will invoice you on a monthly basis referencing the DIR Control Number stamped on the Acknowledgment for each approved Statement of Work and Acknowledgment against the Blanket Purchase Order issued.*

6. **Ownership and license.** *Software and materials that we provide in connection with the services will be provided subject to the following provisions:*

**a. Technical Services.**

- i. *Any commercial off-the-shelf product published by us or a third party ("commercial product") which is provided pursuant to a Statement of Work shall be licensed to you according to the terms of the end user license agreement packaged with such product.*
- ii. *All rights in any computer code or materials developed by or for us or you independently of a Statement of Work ("pre-existing work") shall remain the sole property of the party providing the pre-existing work. We hereby grant you a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify our pre-existing work provided to you under a Statement of Work for your internal business operations. You hereby grant us a non-exclusive license to use, reproduce and modify any pre-existing work of yours during and solely for the performance of Statement of Work*
- iii. *All rights in any computer code or materials (other than a commercial product or pre-existing work) developed by us and provided to you in the course of performance of a Statement of Work ("developments") shall be jointly owned by you and us. Each party shall be free to use, reproduce and modify the developments for any purpose whatsoever, without any obligation of accounting or payment of royalties, provided that you agree to limit your use, reproduction and modification of developments for your internal business operations. Each party shall be the sole owner of any modifications that it makes based upon the developments. All rights not expressly granted are reserved.*

**7. Confidentiality.**

**a. Confidential information.** To the extent consistent with the Texas Public Information Act, confidential information means information marked or otherwise identified in writing by a party as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. It includes non-public information regarding either party's products, features, marketing and promotions, and the negotiated terms of our agreements. Confidential information does not include information which: (i) the recipient developed independently; (ii) the recipient knew before receiving it under the relevant agreement; (iii) is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality, or (iv) is disclosed pursuant to compliance with the Texas Public Information Act.

**b. Use of confidential information.** *To the extent permitted by Texas law, for a period of five years after disclosure, neither party will use the other's confidential information without the other's written consent except in furtherance of this business relationship or disclose the other's confidential information except (i) to obtain advice from legal or financial consultants, or (ii) if compelled by law, in which case the disclosing*

party will use its best efforts to give the other party notice of the requirement so that the disclosure can be contested.

*To the extent permitted by Texas law, you and we will take reasonable precautions to safeguard each other's confidential information. Such precautions will be at least as great as those we each take to protect our own confidential information. You and we will disclose each other's confidential information to our employees or consultants only on a need-to-know basis and subject to the confidentiality obligations imposed here. To the extent permitted by Texas law, when confidential information is no longer necessary to perform any obligation under any of the agreements, each of us will return it to the other or destroy it at the other's request. Notwithstanding any other provision of this Section 6, you may disclose the terms and conditions of this agreement in accordance with the requirements of your public records law. Specifically, we acknowledge that this agreement is subject to Texas's Public Information Act, and that this agreement may nevertheless be deemed as a matter of law to be public information under the Texas Public Information Act. Accordingly, the parties agree that if you receive a request for such information, you will promptly notify us of such request, and the identity of the requesting party, whereupon our receipt of such notice we agree that our consent to such disclosure, subject to and in accordance with the provisions of the Texas Public Information Act, shall be deemed to have been given. You agree to take every commercially reasonable step to ensure that your personnel, or the personnel of any affiliates, which respond to such Public Information Act requests are aware of this notification requirement. We agree that your failure to notify us of such disclosure, or a similar such failure of an affiliate, which such failure is due solely to simple negligence, shall not be deemed to be a material breach of this agreement.*

*We acknowledge that you are a government agency subject to the Texas Public Information Act. We also acknowledge that you will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.*

**c. Retained rights.** You and we are free to develop products independently without the use of the other's confidential information. Neither you nor we are obligated to restrict the future work assignments of people who have had access to confidential information. In addition, these people are free to use the information that they remember related to information technology, including ideas, concepts, know-how or techniques, so long as they do not disclose confidential information of the other party in violation of this agreement. This use shall not grant either party any rights under the other's copyrights or patents and does not require payment of royalties or separate license.

We or you may provide suggestions, comments or other feedback to the other with respect to the other's confidential information. Feedback is voluntary and the receiving party is not required to hold it in confidence. The receiving party will not disclose the source of feedback without the providing party's consent. Feedback may be used for any purpose without obligation of any kind.

**d. Cooperation in the event of disclosure.** Each of us will immediately notify the other upon discovery of any unauthorized use or disclosure of confidential information and will cooperate in any reasonable way to help the other regain possession of the confidential information and prevent further unauthorized use.

**e. Knowledge base.** We may use any technical information we derive from providing the services relating to problem resolution, troubleshooting, product functionality enhancements and fixes, for our knowledge base. We agree not to identify you or disclose any of your confidential information in any item in the knowledge base.

## **8. Warranties.**

**a. Services.** We warrant that all services will be performed using generally accepted industry standards and practices.

### *Statement of Work*

**b. No other warranties.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS SECTION, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS, SERVICE DELIVERABLES, RELATED MATERIALS AND SERVICES. WE WILL NOT BE LIABLE FOR ANY SERVICES OR PRODUCTS

PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS, OR TECHNICIANS IDENTIFIED OR REFERRED TO YOU BY US UNLESS SUCH THIRD PARTY PRODUCTS OR SERVICES ARE PROVIDED UNDER WRITTEN AGREEMENT BETWEEN YOU AND US, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN SUCH AGREEMENT.

**9. Defense of infringement claim.** We will defend you *and any Affiliate* against any claim by an unaffiliated third party that any service deliverable infringes its copyright, or U.S. trademark, or misappropriates any trade secret protected under the laws of the United States (as the terms "misappropriation" and "trade secret" are defined in the Uniform Trade Secrets Act), and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement, *subject to the written approval of our sole control of the defense and settlement of the claim by the Texas Attorney General which will not be unreasonably withheld or delayed and, in any event, such approval shall be required only to the extent required by the constitution or a statute of the State of Texas.* Our defense obligations under this Section 9 shall be null and void if the Texas Attorney General does not grant us the approval specified above in a timely manner. You and your affiliate agree(s) to provide us with reasonable assistance in defending the claim, and we will reimburse you or any affiliate for reasonable out of pocket expenses that you or it incur(s) in providing that assistance.

Our obligations will not apply to the extent that the claim or adverse final judgment is based on (i) specifications you or any affiliate provide to us for the service deliverables; (ii) code or materials provided by you or any affiliate as part of service deliverables; (iii) you or any affiliate running of the service deliverables after we notify you or any affiliate to discontinue running due to such a claim; (iv) your combining (or any affiliate combining) the service deliverables with a non-Microsoft product, data or business process; (v) use of, or access to, the service deliverables by any person or entity other than an employee, contract employee or volunteer employee of you or an affiliate and for which you or such affiliate take responsibility; or (vi) your altering the service deliverables. In addition, we will not be liable for any trade secret claim based upon acts of you or your affiliates, which, in the absence of this agreement, would make you, or such affiliate(s) liable for trade secret misappropriation. To the extent permitted under the laws and the constitution of the State of Texas, you will be completely responsible for all costs and damages associated with any and all claims or lawsuits that arise or result from these actions.

If we receive information concerning an infringement claim related to a service deliverables, we may, at our expense and without obligation to do so, either (i) procure for you the right to continue to run the allegedly infringing service deliverable, or (ii) modify the service deliverable or replace it with a functional equivalent, to make it non-infringing, in which case you will stop running the allegedly infringing product or service deliverable immediately. If, as a result of an infringement claim, your use of a service deliverable is enjoined by a court of competent jurisdiction, we will use commercially reasonable efforts to either procure the right to continue its use, replace it with a functional equivalent, or modify it to make it non-infringing.

If any other type of third party claim is brought against you or your affiliate regarding our intellectual property, you or your affiliate must notify us promptly in writing. We may, at our option, choose to treat these claims as being covered by this section.

**10. Limitation of liability.**

**a. Limitation.** There may be situations in which you *and/or your affiliates* have a right to claim damages or payment from us. Except as otherwise specifically provided in this paragraph, whatever the legal basis for your claim, our aggregate liability under this agreement will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you *and/or your affiliates* have paid for the services giving rise to the claim. In the case of our responsibilities with respect to third party trademark or copyright infringement claims, or claims of trade secret misappropriation, our obligation to defend such claims will not be subject to the preceding limitation, but our liability to pay damages resulting from any final adjudication (or settlement to which we consent) will be. In the case of services provided to you free of charge, or code you are authorized to redistribute to third parties without separate payment to Microsoft, our total liability to you will not exceed US\$5000, or its equivalent in local currency. The limitations contained in this paragraph will not apply with respect to our obligations under Section 6 (confidentiality).

**b. No liability for certain damages.** To the maximum extent permitted by Texas law, neither party nor any of its affiliates or suppliers will be liable for any indirect damages (including, without limitation, consequential, special or incidental damages, damages for loss of profits or revenues, business interruption, or loss of business information) arising in connection with any agreement, product or service, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. This exclusion of liability does not apply to either party's liability to the other for violation of its confidentiality obligation or of the other party's intellectual property rights *to the extent such exclusion is permitted by Texas law.*

**b. Application.** The limitations on and exclusions of liability for damages in this agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

**11. Price Protection.** *Our labor rates for technical services as of the Effective Date of this services agreement are attached to this agreement as Appendix A, Technical Services Rates. We reserve the right to revise our labor rates effective September 1, 2003. Estimated total fees for technical services under each Statement of Work Statement of Work will be as agreed by the parties in each Statement of Work and acknowledgement.*

**12. Term.** *The term of this agreement is from the date of execution through August 31, 2003 at the Public Sector Practice Published Rates as set forth in Appendix A with the option of a1 (one) year renewal for the period of September 1, 2003 through August 31, 2004 at the then current Public Sector Practice Published Rates by written agreement of both parties.*

**13. Termination.** *Providing that this Agreement is properly executed, it shall be effective as of the date signed by us (the "effective date"), provided that it must also be executed by you to become legally binding, and will remain in effect in accordance with paragraph 12 above, unless it is terminated by either party as described below. You may terminate this agreement or any Statement of Work for convenience by giving us 30 days written notice. Either party may terminate this agreement or any Statement of Work if the other party is in material breach or default of any obligation that is not cured within 30 days notice of such breach. You agree to pay all fees for services performed and expenses incurred prior to termination in accordance with the provisions of Section 3. Termination of this agreement will terminate all outstanding Statements of Work.*

**14. Survival.** The provisions regarding warranty, limitation of liability, confidentiality, fees and expenses, obligations on termination or expiration, ownership and license, and miscellaneous of this agreement, and any provisions specified as surviving in a Statement of Work, survive any termination or expiration of this agreement or any Statement of Work.

**15. Insurance.** At all times when we will be performing services on your premises, we will have the following insurance coverage:

**a. Commercial general liability** covering bodily injury and property damage liability with a limit of not less than \$1,000,000 each occurrence;

**b. Workers' compensation** (or maintenance of a legally permitted and governmentally approved program of self-insurance) covering our employees under applicable workers' compensation laws for work-related injuries suffered by our employees;

**c. Employer's liability** with limits of not less than \$1,000,000 each accident; and

**d. Software errors and omissions liability** covering damages arising out of negligent acts, errors, or omissions in the performance of this agreement, with a limit of liability of not less than \$2,000,000 each claim.

We will provide you with certificates of insurance evidencing this coverage on request.

**16. Miscellaneous.**



**a. Entire agreement.** The documents identified on the cover page of this agreement constitute our entire agreement concerning the subject matter hereof, and supersede any other prior and contemporaneous communications. The terms of these documents shall control in the following order: (i) this agreement, and (ii) any Statement of Work. The terms of any purchase order or any general terms and conditions you or your affiliates maintain, other than those mandatory terms required by statute or regulation, do not apply. This agreement can be changed only by an amendment signed by both parties.

**b. Independent contractor; subcontractors.** We provide our services as an independent contractor, and will be responsible for any and all social security, unemployment, workers' compensation and other withholding taxes for all of our employees. We may use subcontractors to perform services, in which case we will be responsible for the performance of those subcontractors.

**c. Notices.** All notices, authorizations, and requests given or made in connection with this agreement, including notice of termination of this agreement, must be sent by post, express courier, facsimile, or email to the addresses and numbers indicated in the cover page to this agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.

**d. Assignment.** Neither party may assign this agreement or any Statement of Work without the written consent of the other, *which consent will not be unreasonably withheld.*

**e. Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the agreement to give effect to the stricken clause to the maximum extent possible.

**f. Waiver.** No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

**g. Force majeure.** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.

**h. Note on Java support.** The products, fixes or service deliverables may contain support for programs written in Java. Java technology is not fault tolerant and is not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of Java technology could lead directly to death, personal injury, or severe physical or environmental damage. *Sun Microsystems, Inc. has contractually obligated Microsoft to make this disclaimer.*

**i. Limitations on actions.** Except for any different period required by Texas law, any action arising under this agreement must be brought within two years from the date that the cause of action arose.

**j. Applicable law; dispute resolution.** The terms of this agreement will be governed by the laws of the State of Texas, without giving effect to its conflict of law provisions. This choice of law does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction, to the extent allowable by the laws and constitution of the State of Texas. Disputes relating to this agreement, or any Statement of Work for state agency affiliates will be subject to the requirements of Chapter 2260, Government Code. *Nothing herein shall be construed to waive the State of Texas' sovereign immunity.*

**k. Cost or pricing data.** We will not, under any circumstances, accept work that would require the submission of cost or pricing data.

**m. Microsoft Affirmation.** *By accepting the terms of this agreement, we certify to the best of our knowledge and belief that (i) we or our affiliates have not given, nor offered to give, nor do we intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement; (ii) neither we nor our affiliates are currently delinquent in the payment*

of any franchise tax owed the State of Texas or in the payment of any child support obligations under applicable state law; and (iii) that Microsoft is a Qualified Information Services Vendor as defined in 2157.001(2), Government Code.

**l. Antitrust Statement.** On June 7, 2000, in *United States of America vs. Microsoft Corporation*, the United States District Court for the District of Columbia issued a final judgment based upon earlier determinations that Microsoft has violated federal and state antitrust laws. The State of Texas is not a party to that litigation; thus there was no ruling with respect to violation by Microsoft of Texas antitrust laws. Microsoft believes that the determinations of the district court were erroneous in numerous respects and that the company has not violated any antitrust laws. Microsoft has filed a timely notice of appeal.

**o. Appropriation of Funds.** The continuation of this agreement and any affiliate agreement under this agreement is contingent upon the appropriation of funds to fulfill the requirements of this agreement, or the affiliate agreement by the appropriate Texas legislative body. If the appropriate Texas legislative body fails to appropriate sufficient monies to provide for the continuation of this agreement or an affiliate agreement, as it pertains to you or any affiliate, or if such appropriations are reduced by the veto of the Governor of the State of Texas in the instance of a state agency affiliate, or by any means provided by law, and the effect of such reduction is to provide insufficient monies for the continuation of this agreement or an affiliate agreement, then this agreement, or the affected affiliate agreement, as the case may be, shall immediately terminate on the last date of the fiscal year in which sufficient funds are available.

**m. Equivalent Access.** This provision applies only to state agencies in Texas. We expressly acknowledge that state funds may not be expended in connection with the purchase of an automated information system, unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, we represent and warrant that the technology provided to you and your Affiliates for purchase pursuant to this Agreement and the related enrollments is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and non-visual means; (2) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

You agree to provide us with written notice of any claim of non-compliance of one or more products with respect to this Section 14(m), and shall allow us a reasonable period of time in which to cure such non-compliance. Provided that we are unable to cure such non-compliance within a reasonable period of time, you and your Affiliates' sole remedy for our breach of this Section 14(m) shall be to receive from us a credit against future license fees equal to the depreciated value of the product licenses obtained under an enrollment for non-compliant products. Upon receipt of such credit, you or your Affiliate(s) shall discontinue use of such products, and the licenses for individual copies of such products shall become null and void. This provision shall not be construed to cause the licenses for an entire product line, or all copies of a given product, to become void. Rather, it shall be narrowly construed to apply only to licenses for specific copies of products for which both i) we are unable to cure non-compliance; and ii) the user or users of such copy require compliance in order to perform one or more tasks. For purposes of this paragraph, the depreciated value of an enterprise license or additional product license will be calculated based on (i) the straight-line amortization of the total per-unit reference price for each all installment payments (paid and unpaid) for such license over a twenty-four (24) month period from the date the enterprise product or additional product for such license was, or should have been, ordered; minus (ii) the per-unit reference price of any unpaid installment payments for such license.

**n. NO QUANTITY GUARANTEES.** Affiliates may obtain services from other sources during the agreement term. You make no express or implied warranties whatsoever that any particular number of orders will be issued or that any particular quantity or dollar amount of services will be procured through the agreement.

**o. CERTIFICATIONS.**

We certify (i) we have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this agreement; (ii) we are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither we, nor anyone acting for us, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) we have not received payment from you or any of your employees for participating in the preparation of this agreement; (v) we are not ineligible to receive this agreement under § 2155.004, Texas Government Code; (vi) we are in compliance with §618.003, Texas Government Code; (vii) we will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this agreement; and (viii) to the best of our knowledge and belief, there are no suits or proceedings pending or threatened against or affecting us, which if determined adversely to us will have a material adverse effect on the ability of us to fulfill our obligations under this agreement.

**p. EQUAL OPPORTUNITY COMPLIANCE.**

We agree to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which our primary place of business is located. In accordance with such laws, regulations, and executive orders, we agree that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by us under this agreement. If we are found to be not in compliance with these requirements during the term of this agreement, we agree to take appropriate steps to correct these deficiencies. Upon request, we will furnish information regarding our nondiscriminatory hiring and promotion policies, as well as specific information on the composition of our principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

**q. COMMODITY SOFTWARE.** Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by you, unless the affiliate obtains a waiver from you. We agree to coordinate all affiliate commodity software sales made pursuant to this agreement through existing DIR contracts, if available. We represent we will not license through a signed or unsigned license agreement, volume licensing agreement or an order confirmation, the commodity software to state agency affiliates unless the affiliate is able to provide a DIR granted waiver that the affiliate is able to purchase the commodity software outside the DIR Commodity Software contracts. The operating system software and institutions of higher education are not bound to this Code.

**r. RECORDS.** We shall maintain adequate records to establish compliance with this agreement until the later of a period of four years after termination of this agreement or until full, final and unappealable resolution of all litigation issues that arise under this agreement. Such records shall include identification of the procuring affiliate, documentation of the affiliate's ordering date, order date of service, service delivery date, unit price, extended price, Vendor invoice number, the calculations supporting each administrative fee owed you under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as you may request.

**s. ABILITY TO CONDUCT BUSINESS IN TEXAS.** We are an entity authorized and validly existing under the laws of our state of organization, and are authorized to do business in the State of Texas. We are a "Qualified Information Systems Vendor" as defined in §2157.001, Texas Government Code. All services offered to affiliates under this agreement are listed in our catalogue on file with the Texas Building and Procurement Commission.

**t. DIR LOGO.** We may use the DIR logo in the promotion of this agreement with the following stipulations; (i) the logo may not be modified in any way; (ii) when displayed, the size of the DIR logo must be equal to or smaller than our logo; (iii) the DIR logo is only used to communicate the availability of services under this agreement; and (iv) any other use of the DIR logo requires prior written permission from you.

**u. VENDOR LOGO.** You may use our name and logo in the promotion of this agreement to communicate the availability of services under this agreement. Use of the logo may be on your Web Site or on printed materials. Any use of our Logo by you must comply with and be solely related to the purposes of this agreement and any usage guidelines communicated to you from time to time. Nothing contained in this agreement will give you any right, title, or interest in or to our trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by us.

**v. TRADE SHOW PARTICIPATION.** We understand and agree that we must participate by providing a manned booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by you each calendar year at our expense. We must display the DIR logo at all trade shows. You reserve the right to approve or disapprove of the location of the use of the DIR logo in or on our booth.

**w. HANDLING OF WRITTEN COMPLAINTS.** In addition to other remedies contained in this agreement, a person contracting with you may direct their written complaints to the following office:

*Public Information Office  
Department of Information Resources  
Attn: Matt Kelly  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, TX 78701  
(512) 936-6550, voice  
(512) 475-4759, fax  
Email: [matt.kelly@dir.state.tx.us](mailto:matt.kelly@dir.state.tx.us)*



Consulting Services, Public Sector Practice Published Price List

**MCS PUBLIC SECTOR PRACTICE HOURLY RATES EFFECTIVE 06/24/2002**

<u>STAFF LEVEL</u>	<u>HOURLY RATE</u>
PRACTICE MANAGER	\$331.00 per hour
ARCHITECTURAL MICROSOFT TECHNICIAN	\$296.00 per hour
PRINCIPAL MICROSOFT TECHNICIAN	\$289.00 per hour
ENGAGEMENT MANAGER	\$289.00 per hour
SENIOR MICROSOFT TECHNICIAN	\$255.00 per hour
MICROSOFT TECHNICIAN	\$230.00 per hour
ASSOCIATE MICROSOFT TECHNICIAN	\$188.00 per hour
TECHNICIAN V	\$251.00 per hour
TECHNICIAN IV	\$221.00 per hour
TECHNICIAN III	\$197.00 per hour
TECHNICIAN II	\$162.00 per hour
TECHNICIAN I	\$142.00 per hour
TECHNICIAN	\$100.00 per hour
ASSOCIATE TECHNICIAN	\$78.00 per hour

**POINT OF CONTACT FOR MORE INFORMATION:**

*Corey Griffin, Contracts Manager*

Microsoft Consulting Services- Public Sector

5335 Wisconsin Avenue, NW, Suite 600

Washington, DC 20015

Phone (202) 895-2040 Fax (202) 364-8853

Email: Coreyg@Microsoft.com

## Appendix B

### ***Engagement Manager (Quality Assurance & Management Review)***

- Coordinate development and delivery of Vendor proposals and project deliverables in response to customer tasking requirements
- Work with customer and project team to develop and gain consensus on Vision Scope
- Direct the activities of Principal Microsoft Technicians, Senior Microsoft Technicians, and Associate Microsoft Technicians , and Sub-Contractors
- Makes project scheduling decisions
- Participate in project staffing decisions
- Participate in strategic planning sessions with Vendor Technical Project Manager and customer staff
- Provide key personal link to Senior Executive Microsoft staff including feedback of customer issues
- Provide quality assurance review of engagement processes and deliverables

General Experience: Five to fifteen years demonstrated performance in related technology and business management. Experienced in business development and managing projects involving such complex networks, cross-platform integration and large-scale, complex systems design and implementation. This individual will have been formally trained by Microsoft in one or more of the following areas: Microsoft Solutions Framework, product futures, and relevant Certified Training in infrastructure and/or development areas associated with Microsoft's products.

Functional Responsibilities: Lead Microsoft business contact for customers, and also coordinates and schedules project resources to ensure development or analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

Education: Bachelor's or Masters degree or industry equivalent experience.

### ***Architectural Microsoft Technician (Quality Assurance)***

- Work with customer and project team to develop and gain consensus on Vision Scope
- Contribute to review of customer tasks and development of Vendor strategic approaches
- Direct the activities of Principal Microsoft Technicians, Senior Microsoft Technicians , and Associate Microsoft Technicians , and Sub-Contractors
- Lead role in delivering technical presentations to customer
- Participate in delivering technical presentations to customer staff
- Participate in design review of information systems
- Participate in project staffing decisions
- Participate in strategic planning sessions with Vendor Technical Project Manager and customer staff
- Perform Rapid Economic Justification (REJ) and Total Cost of Ownership (TCO) Analysis Provide key personal link to Microsoft technology groups
- Provide quality assurance review of engagement process and deliverables

General Experience: Five to twenty years demonstrated performance in related technology. Experienced in topics such as complex networks, messaging, cross-platform integration and large-scale, complex systems and applications design and implementation. This individual will have been formally trained by Microsoft in one or more of the following areas: Microsoft Solutions Framework, product futures, and relevant Certified Training in infrastructure and/or development areas associated with Microsoft's products.

**Functional Responsibilities:** Works closely with Project manager as the Microsoft Advocate and sole or shared Technical lead to ensure development or analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

**Education:** Bachelor's or Masters degree or industry equivalent experience.

***Principal Microsoft Technician (Quality Assurance)***

- Contribute to review of customer tasks and development of Vendor strategic approaches
- Direct the activities of other Senior, and Associate
- Lead role in delivering technical presentations to customer
- Meet/interview customer to capture specific requirements in concise format
- Participate in delivering technical presentations to customer staff
- Participate in design of information systems
- Participate in project staffing decisions
- Participate in strategic planning sessions with Vendor Technical Project Manager and customer staff
- Perform Rapid Economic Justification (REJ) and Total Cost of Ownership (TCO) Analysis
- Provide key personal link to Microsoft technology groups
- Provide quality assurance review of engagement process and deliverables

**General Experience:** Five to fifteen years demonstrated performance in related technology. Experienced in topics such as complex networks, messaging, cross-platform integration and large-scale, complex systems and applications design and implementation. This individual will have been formally trained by Microsoft in one or more of the following areas: Microsoft Solutions Framework, product futures, and relevant Certified Training in infrastructure and/or development areas associated with Microsoft's products.

**Functional Responsibilities:** Works closely with Project manager as the Microsoft Advocate and sole or shared Technical lead to ensure development or analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

**Education:** Bachelor's or Masters degree or industry equivalent experience.

***Senior Microsoft Technician (Technical Project Manager)***

- Analyze technical requirements and develop effective technical solutions
- Direct the activities of other Senior, and Associate
- Lead role in conceiving architectural designs
- Lead role in current environment assessment
- Lead role in delivering technical presentations to customer
- Manage specific tasks including directing the efforts of selected Vendor and customer staff
- Meet/interview customer to capture specific requirements in concise format
- Participate in design of information systems
- Perform in the role of Enterprise or Partner Strategy Microsoft Technician
- Perform Rapid Economic Justification (REJ) and Total Cost of Ownership (TCO) Analysis
- Provide key personal link to Microsoft technology groups
- Provide leadership and guidance to support the implementation of large systems including methodology, design approaches, and architectural and engineering considerations
- Provide quality assurance review of engagement processes and deliverables
- Serve as Technical Project Manager

- Work with customer staff to implement customer technology (e.g., testing, documentation, meeting user expectations).

General Experience: Five to fifteen years demonstrated performance in related technology. Experienced in topics such as complex networks, messaging, cross-platform integration and large-scale, complex systems design and implementation. This individual will have been formally trained by Microsoft in one or more of the following areas: Microsoft Solutions Framework, product futures, and relevant Certified Training in infrastructure and/or development areas associated with Microsoft's products.

Functional Responsibilities: Lead Microsoft Advocate and Technical lead to ensure development or analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

Education: Bachelor's or Masters degree or industry equivalent experience.

#### ***Microsoft Technician (Lead Project Support)***

- Analyze technical requirements and develop effective technical solutions
  - Assist in conceiving architectural designs
  - Assist in delivering technical presentations to customer staff
  - Assist in the implementation of large systems including methodology, design approaches, and architectural and engineering considerations.
  - Design and write code as required for selected customer systems
  - Develop documentation on selected customer systems and objectives
  - Meet/interview customer to capture specific requirements in concise format
  - Perform in the role of Enterprise or Partner Strategy Microsoft Technician
- Provide key personal link to Microsoft technology groups
  - Serve as Technical Project Lead
  - Work with customer staff to implement customer technology (e.g., testing, documentation, meeting user expectations).
  - Work with customer staff to support technical strategy and control objectives

General Experience: Five plus years demonstrated performance in related technology. Experienced in topics such as complex networks, messaging, cross-platform integration and large-scale, complex systems design and implementation. Microsoft will have formally trained this individual in one or more of the following areas: Microsoft Solutions Framework, product futures, and relevant Certified Training associated with Microsoft's products.

Functional Responsibilities: Works closely with Project manager as the Microsoft Advocate and sole or shared Technical lead to ensure development or analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

Education: Bachelor's degree or industry equivalent experience.

#### ***Associate Microsoft Technician (Project Support)***

- Assist in delivering technical presentations to customer staff
- Design and write code as required for selected customer systems
- Develop documentation on selected customer systems and objectives
- Directly involved in the hands-on implementation of customer systems
- Provide Technical Writing and Documentation support
- Work with customer staff personnel to support technical strategy and control objectives



General Experience: One to five years demonstrated performance or internship in related technology. Experienced in topic such complex networks, cross-platform integration and large-scale, complex systems design and implementation. Microsoft will have formally trained this individual in product futures, and relevant Certified Training associated with Microsoft's products.

Functional Responsibilities: Works to support the Microsoft Project manager to ensure development, analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

Education: Bachelor's degree or industry equivalent experience.

#### ***Technician V (Senior Technical Project Support)***

- Participate in strategic planning sessions with Vendor Technical Project Manager and customer staff
- Participate in delivering technical presentations to customer staff
- Serve as Technical Project Manager
- Analyze technical requirements and develop effective technical solutions
- Lead role in conceiving architectural designs
- Lead role in current environment assessment

General Experience: Eight or more years demonstrated performance in related technology. Experienced in topics such as complex networks, messaging, cross-platform integration and large-scale, complex systems design and implementation. This individual will have been trained in one or more of the following areas: Microsoft Solutions Framework, product futures, and relevant Certified Training associated with Microsoft's products.

Functional Responsibilities: Works closely with Project manager as the Microsoft Advocate and sole or shared Technical lead to ensure development or analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

Education: Bachelor's degree or industry equivalent experience.

#### ***Technician IV (Lead Technical Project Support)***

- Analyze technical requirements and develop effective technical solutions
- Assist in conceiving architectural designs
- Assist in delivering technical presentations to customer staff
- Assist in the implementation of large systems including methodology, design approaches, and architectural and engineering considerations.
- Design and write code as required for selected customer systems
- Directly involved in the hands-on implementation of customer systems
- Lead role in conceiving architectural designs
- Lead role in current environment assessment
- Meet/interview customer to capture specific requirements in concise format
- Participate in design of information systems
- Work with Vendor & customer staff to support technical strategy and control objectives

General Experience: Five to eight years demonstrated performance in related technology. Experienced in topics such as complex networks, messaging, cross-platform integration and large-scale, complex systems design and implementation. This individual will have been trained in one or more of the following areas: Microsoft Solutions Framework, product futures, and relevant Certified Training associated with Microsoft's products.

Functional Responsibilities: Works closely with Project manager as the Microsoft Advocate and sole or shared Technical lead to ensure development or analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

Education: Bachelor's degree or industry equivalent experience.

#### ***Technician III (Technical Project Support)***

- Assist in delivering technical presentations to customer staff
- Design and write code as required for selected customer systems
- Develop documentation on selected customer systems and objectives
- Directly involved in the hands-on implementation of customer systems
- Meet/interview customer to capture specific requirements in concise format
- Work with Vendor & customer staff personnel to support technical strategy and control objectives

General Experience: Five plus years demonstrated performance in related technology. Experienced in topic such complex networks, cross-platform integration and large-scale, complex systems design and implementation. This individual will have been trained in product futures, and relevant Certified Training associated with Microsoft's products.

Functional Responsibilities: Works to support the Microsoft Project manager to ensure development, analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

Education: Bachelor's degree or industry equivalent experience.

#### ***Technician II (Project Support)***

- Assist in delivering technical presentations to customer staff
- Design and write code as required for selected customer systems
- Develop documentation on selected customer systems and objectives
- Directly involved in the hands-on implementation of customer systems
- Work with Vendor & customer staff personnel to support technical strategy and control objectives

General Experience: Three to five years demonstrated performance in related technology. Experienced in topic such complex networks, cross-platform integration and large-scale, complex systems design and implementation. This individual will have been trained in product futures, and relevant Certified Training associated with Microsoft's products.

Functional Responsibilities: Works to support the Microsoft Project manager to ensure development, analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

Education: Bachelor's degree or industry equivalent experience.

#### ***Technician I (Project Support)***

- Design and write code as required for selected customer systems
- Directly involved in the hands-on implementation of customer systems
- Provide Technical Writing and Documentation support
- Work with Vendor and customer staff to support technical strategy and control objectives

General Experience: One to five years demonstrated performance or internship in related technology. Experienced in topic such complex networks, cross-platform integration and large-scale, complex

systems design and implementation. This individual will have been trained in product futures, and relevant Certified Training associated with Microsoft's products

**Functional Responsibilities:** Works to support the Microsoft Project manager to ensure development, analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

**Education:** Bachelor's degree or industry equivalent experience.

***Technician (Project Support)***

- Design and write code as required for selected customer systems
- Directly involved in the hands-on implementation of customer systems
- Provide Technical Writing and Documentation support

**General Experience:** One to three years demonstrated performance or internship in related technology. Experienced in topic such networks, integration and systems design and implementation.

**Functional Responsibilities:** Works to support the Microsoft Project manager to ensure development, analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

**Education:** Degree or industry equivalent experience.

***Associate Technician (Project Tech Writer)***

- Develop documentation on selected customer systems and objectives
- Provide Technical Writing and Documentation support

**General Experience:** Experienced in topic such networks, integration and systems design and implementation.

**Functional Responsibilities:** Works to support the Microsoft Project manager to ensure development, analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

**Education:** Industry equivalent experience.

**AMENDMENT NUMBER 1 to  
DIR-VPC-03-009 between  
Microsoft Consulting Services and the State of Texas, acting by and through the Department  
of Information Resources**

This amendment is hereby affixed to and shall become a part of DIR-VPC-03-009, effective November 1, 2001, ("agreement") between Microsoft Consulting Services ("MCS" or "Vendor", "Us", "We", "Our") and the State of Texas, acting by and through the Department of Information Resources ("DIR", "You", "Your"). This Amendment Number 1, as incorporated into the agreement, is subject to all terms, conditions, restrictions and limitations contained in the agreement not in conflict with this Amendment including the limitation of liability provision. The agreement is hereby modified as follows:

**1. Section 2 - Services** is hereby restated as follows:

Vendor agrees to provide technical services under the terms and conditions of this agreement. The precise scope of the services will be specified in a Statement of Work entered into under this agreement. You or any of your affiliates can enter into a Statement of Work under this agreement with our local affiliate. Each individual affiliate is responsible for its compliance with the terms and conditions of this agreement. DIR will be responsible for compliance with the terms in this agreement applicable to DIR, but not for the compliance of any affiliates with the terms applicable to affiliates. Vendor's ability to deliver the services depends upon DIR's full and timely cooperation, as well as the accuracy and completeness of any information DIR provides. This agreement does not obligate either of us or any of our affiliates to enter into any Statement of Work. Prior to commencing services hereunder, we, you and your affiliate requesting the services shall execute a Statement of Work.

**2. Section 3 - Fees and expenses** is hereby restated as follows:

After we provide the technical services under this agreement and the technical services have been accepted by your affiliate, you agree to pay us the correctly invoiced fees for services described in each DIR and affiliate approved Statement of Work at the rates specified in this agreement. You will reimburse us for reasonable travel expenses in accordance with the State of Texas Reimbursement Guidelines as found in Article IX of the Appropriations Act, Senate Bill 1 (78<sup>th</sup> Legislature), and provided such travel expenses are specified in the Statement of Work. You agree to pay us pursuant to the Texas Prompt Payment Act, which directs payment 30 days following acceptance by your affiliate and DIR of the services provided. Technical services are deemed accepted upon your affiliate's approval of properly submitted invoiced hours and travel expenses. You and each of your affiliates are tax exempt and shall not pay, or be liable for the reimbursement of, any sales, use, value added, excise or other tax, duties, tariffs, or other governmental charges or expenses on payments made under this agreement. We are responsible for taxes based upon our personal property ownership and net income. We will assess a finance charge of the lesser of 1.5% per month or the highest amount allowed by the Texas Prompt Payment Act on all past due amounts. Failure to pay for more than 60 days after the date of invoice shall be a material breach, unless non-payment is pursuant to a dispute as authorized under the Texas Prompt Payment Act.

**3. Section 5 - Contract procedures** is hereby restated as follows:

DIR's affiliate will contact Vendor to obtain a Statement of Work for technical services. Vendor will issue a Statement of Work to the affiliate, which includes the MS Public Sector Price List rates plus the DIR administrative fee, which is currently 2%. The Statement of Work will include the

service level of the technician, the number of hours, the total estimated travel expenses and a start and end date. Upon receipt of the Purchase Order and Statement of Work, DIR will countersign the Statement of Work. DIR will present its affiliate approved Statement of Work to us. After DIR presents the approved Statement of Work, Vendor will commence work. We will invoice you on a monthly basis referencing the DIR Control Number stamped on the Statement of Work for each approved Statement of Work against the Blanket Purchase Order issued.

**4. Section 11 - Price Protection is hereby restated as follows:**

Our labor rates for technical services as of the Effective Date of this services agreement are attached to this agreement as Appendix "A", Technical Services Rates. Estimated total fees for technical services under each Statement of Work will be as agreed by the parties in each Statement of Work.

Vendor reserves the right to lower the rates presented in the Table presented as Appendix "A" until October 15, 2003. If any change is made to the rates specified in Appendix "A", the lower rate will apply to the concerned labor category.

**5. Section 12 - Term is hereby restated as follows:**

The term of this agreement shall be extended for the period of September 1, 2003 through August 31, 2004 at the Technical Services Rates as set forth in Appendix A.

**6. Section 16m. - Microsoft Affirmation is hereby deleted.**

**7. Section 16l. - Antitrust Statement is hereby restated as follows:**

On May 18, 1998, the Antitrust Division of the U.S. Department of Justice (DOJ) and a group of state Attorneys General filed two antitrust cases against Microsoft in the U.S. District Court for the District of Columbia. The DOJ complaint asserted that Microsoft, through various alleged practices, violated Sections 1 and 2 of the Sherman Act. The state Attorneys General alleged largely the same claims and coterminous pendent state claims in their complaints. The cases were consolidated by the district court. The full text of the complaints and other papers on file in these actions may be referenced by case numbers 98-1232 and 98-1233, respectively. After a full trial on the merits the district court entered Findings of Fact and Conclusions of Law in favor of the government. On June 7, 2000, the trial court entered a judgment against Microsoft requiring a break-up of the company. Microsoft appealed. On June 28, 2001, the D.C. Circuit Court of Appeals reversed in part, vacated in part, and affirmed in part the trial court's findings, and remanded the case to a new judge to determine an appropriate remedy given the court "drastically altered the scope of Microsoft's liability" by substantially narrowing the plaintiffs' claims for relief. On November 6, 2001, Microsoft, the DOJ and nine states entered into a proposed settlement agreement. Nine states declined to join the settlement agreement. On November 12, 2002, the federal district court made a determination under the "Tunney Act" that the settlement is in the "public interest" and approved the settlement. The nine litigating states' request for additional remedies was denied. The State of Texas was not a party to the litigation or the settlement discussions (the federal settlement was accepted in full subject to a few modest adjustments). There was no ruling or finding in the underlying litigation Microsoft violated Texas state antitrust law.

**8. Section 16o - Appropriation of Funds is hereby renumbered as Section 16m - Appropriation of Funds.**

**9. Section 16m – Equivalent Access** is hereby renumbered **Section 16n – Equivalent Access**. Paragraph one of Section 16n – Equivalent Access is hereby restated as follows:

This provision applies only to state agencies in Texas: We expressly acknowledge that state funds may not be expended in connection with the purchase of an automated information system, unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, we represent and warrant that the technology provided to you and your Affiliates for purchase pursuant to this Agreement and the related enrollments is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and non-visual means; (2) presenting information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this paragraph, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

**10. Section 16n – No Quantity Guarantees** is hereby renumbered as **Section 16o – No Quantity Guarantees**.

**11. Section 16o – Certifications** is hereby renumbered as **Section 16p – Certifications**.

**12. Section 16p – Equal Opportunity Compliance** is hereby renumbered as **Section 16q – Equal Opportunity Compliance**.

**13. Section 16q – Commodity Software** is hereby renumbered as **Section 16r – Commodity Software**.

**14. Section 16r – Records** is hereby renumbered as **Section 16s – Records**. The following language is hereby added to **Section 16s – Records** as follows:

Vendor understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor’s Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor’s Office or its successor in the conduct of the audit or investigation, including providing all records directly related to this Agreement only. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to this Agreement. Vendor will reimburse the State of Texas for all costs associated with enforcing this provision.

**15. Section 16s – Ability to Conduct Business in Texas** is hereby renumbered as **Section 16t – Ability to Conduct Business in Texas**.

**16. Section 16t – DIR Logo** is hereby renumbered as **Section 16u – DIR Logo**.

**17. Section 16u – Vendor Logo** is hereby renumbered as **Section 16v – Vendor Logo**.

18. Section 16v - Trade Show Participation is hereby renumbered as Section 16w - Trade Show Participation.

19. Section 16w - Handling of Written Complaints is hereby renumbered as Section 16x - Handling of Written Complaints. Section 16x - Handling of Written Complaints is hereby restated as follows:

In addition to other remedies contained in this agreement, a person contracting with you may direct their written complaints to the following office:

Public Information Office  
Department of Information Resources  
Attn: Public Information Officer  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, TX 78701  
(512) 475-4700, voice  
(512) 475-4759, fax

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. This Amendment Number 1 is executed to be effective as of September 1, 2003.

Microsoft Consulting Services

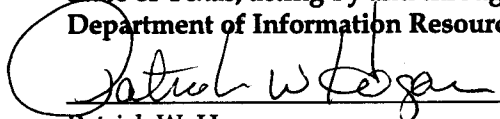
  
Authorized Signature

David T. Gallagher  
Printed Name

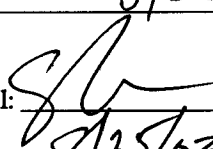
Contracts Manager  
Title

8/27/03  
Date

State of Texas, acting by and through the  
Department of Information Resources

  
Patrick W. Hogan  
Director, Business Operations

8/25/03  
Date

Legal:   
8/25/03



**Consulting Services, Public Sector Practice Published Price List**

**MCS PUBLIC SECTOR PRACTICE HOURLY RATES EFFECTIVE 07/01/2003**

<b><u>STAFF LEVEL</u></b>	<b><u>HOURLY RATE</u></b>
<b>PRACTICE MANAGER</b>	<b>\$331.00 per hour</b>
<b>ARCHITECTURAL CONSULTANT</b>	<b>\$296.00 per hour</b>
<b>PRINCIPAL CONSULTANT</b>	<b>\$289.00 per hour</b>
<b>MANAGING CONSULTANT</b>	<b>\$289.00 per hour</b>
<b>SENIOR CONSULTANT</b>	<b>\$255.00 per hour</b>
<b>CONSULTANT</b>	<b>\$230.00 per hour</b>
<b>ASSOCIATE CONSULTANT</b>	<b>\$188.00 per hour</b>
<b>TECHNICIAN V</b>	<b>\$251.00 per hour</b>
<b>TECHNICIAN IV</b>	<b>\$221.00 per hour</b>
<b>TECHNICIAN III</b>	<b>\$197.00 per hour</b>
<b>TECHNICIAN II</b>	<b>\$162.00 per hour</b>
<b>TECHNICIAN I</b>	<b>\$142.00 per hour</b>
<b>TECHNICIAN</b>	<b>\$100.00 per hour</b>
<b>ASSOCIATE TECHNICIAN</b>	<b>\$78.00 per hour</b>

**POINT OF CONTACT FOR MORE INFORMATION:**

**David Gallagher, Contracts Manager**  
**Microsoft Consulting Services- Public Sector**  
**5335 Wisconsin Avenue, NW, Suite 600**  
**Washington, DC 20015**  
**Phone (202) 895-2040 Fax (202) 243-6702**  
**Email: dgallagh@Microsoft.com**